

Atty. Docket No.
005127.00033

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:
Daniel R. Potter, et al.

Application No.: 10/099,685

Filed: March 14, 2002

For: Custom Fit Sale of Footwear

Examiner: Andrew J. Rudy

Group Art Unit: 3627

Confirmation No.: 4915

REQUEST FOR RECONSIDERATION

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants respectfully request reconsideration of this application and the Office Action dated March 12, 2007.

Claims 1-14 are pending in this application, but claims 1-9 have been withdrawn from further consideration. Accordingly, only claims 10-14 remain under active consideration in this application.

In the Office Action, the Examiner rejected claims 10-14 under 35 U.S.C. § 103(a) based on U.S. Patent No. 6,246,994 to Wolven, et al. (hereinafter "Wolven"). *See* the March 12, 2007, Office Action at pages 2-3. Applicants respectfully traverse this rejection and request that it be withdrawn.

Applicants' claim 10 recites a shoe distribution center that includes: (a) an order receiving unit that receives orders from customers for footwear to custom fit the customer, wherein each order identifies at least one last; (b) a footwear inventory containing a plurality of pieces of footwear in a variety of sizes, wherein an interior of each piece of footwear incorporates a moldable fit-component that allows that piece of footwear to be remolded to lengths and widths differing from that piece of footwear's original lengths and widths; and (c) a footwear manufacturing unit for remolding lengths

and widths of pieces of footwear in the footwear inventory using lasts identified in the orders received by the order receiving unit. Wolven does not teach or suggest the claimed shoe distribution center.

In rejecting all of Applicants' claims as allegedly rendered obvious from the disclosure of Wolven, the Office acknowledged that Wolven does not disclose at least one of the claimed features of Applicants' invention, namely, a shoe last. *See* the March 12, 2007, Office Action at page 2. Without any supporting evidence, the Office simply concludes that the claimed invention is obvious through the following statement:

Official Notice is taken that shoe distribution centers associated with customer last orders for footwear has [sic.] been common knowledge in the shoe distribution art.

Id. at page 2. Applicants respectfully assert that there is no evidence of record to support this assertion of fact, and/or there is no basis for taking "Official Notice" under the circumstances of this case. More specifically, there is no evidence of record to indicate that shoe lasts are used in any manner in a custom footwear ordering, manufacturing, and distributing center, *e.g.*, of the types recited in Applicants' claim 10. There also is no reasonable basis for concluding that this asserted "fact" is "common knowledge" in the industry. Pursuant to the procedure for taking "Official Notice" as set forth in *The Manual of Patent Examining Procedure* § 2144.03C, Applicants respectfully request that the Office provide documentary or other appropriate evidence to support the taking of Official Notice in this case.

The deficiencies of the Wolven patent *vis-à-vis* Applicants' claims, however, do not end with the acknowledged absence of a last. Several features of Applicants' claims are not taught or suggested in the Wolven patent. For example, Applicants' claim 10 recites a shoe distribution center that includes an order receiving unit that receives orders from customers for footwear to custom fit the customer, wherein each order identifies at least one last. Nothing in Wolven teaches or remotely suggests an order receiving unit that receives orders for custom footwear that include identification of a last to be used in producing the footwear. Notably, the Office Action does not specifically address this claimed feature.

Applicants' claim 10 further recites a shoe distribution center that includes a footwear inventory containing a plurality of pieces of footwear in a variety of sizes. The claim further recites that an interior of the footwear incorporates a moldable fit-component that allows that piece of footwear to be remolded to lengths and widths differing from that piece of footwear's original lengths and widths. Wolven does not teach or suggest these claimed features. The Office asserts that the "inventory" of Wolven constitutes the stored "information on the individual." *See* the March 12, 2007, Office Action at page 2. Applicants respectfully submit that this "information on the individual," as identified by Wolven, does not correspond to the "inventory" recited in Applicants' claim 10. Specifically, claim 10 recites that the inventory constitutes "a plurality of pieces of footwear in a variety of sizes," *e.g.*, the items available for sale or distribution in response to the orders received via the order receiving unit. Nothing in Wolven's "information on the individual" constitutes any item available for sale or distribution in response to an order.

Even if considered "inventory," the "information on the individual" described by Wolven still would not correspond to the features recited in Applicants' claim 10. Claim 10 further recites that the footwear in the inventory includes a moldable fit-component that allows that piece of footwear to be remolded to lengths and widths differing from that piece of footwear's original lengths and widths. Absolutely nothing in Wolven teaches or suggests that the asserted "inventory" (*i.e.*, the "information on the individual") or any other feature of the Wolven system includes a moldable fit-component that allows any object to be remolded to different sizes.

Finally, nothing in Wolven teaches or suggests a footwear distribution center that includes a footwear manufacturing unit as recited in claim 10. More specifically, Applicants' claim 10 recites using the last(s) identified in the orders received by the order receiving unit for remolding the lengths and/or widths of pieces of footwear in the footwear inventory. Wolven does not teach or remotely suggest any remolding capabilities of this type. Notably, the Office Action does not specifically address this claimed feature.

Applicants' claim 11 also patentably distinguishes from the cited art. Claim 11 depends from claim 10 and further recites that the footwear manufacturing unit of the claimed shoe distribution center includes: (a) a last inventory containing a plurality of lasts that can be used to remold lengths

or widths of at least some of the pieces footwear in the footwear inventory; and (b) a heating unit for heating the lasts to remold lengths or widths of at least some of the pieces footwear in the footwear inventory. Again, Wolven does not teach or suggest these claimed features, and even more notably, the Office Action does not address these claim features. The Office Action simply concludes that the claim is obvious without any evidentiary support.

In view of the foregoing, Applicants respectfully submit that claims 10-14 patentably distinguish from Wolven. Withdrawal of the rejection and allowance of these claims are earnestly solicited.

If the Examiner believes that an interview will facilitate advancement of the prosecution of this application, he is invited to contact the undersigned attorney by telephone.

Applicants respectfully request a three month extension of time for responding to the outstanding Office Action. If any additional fees are required, such as fees under 37 C.F.R. §§ 1.16 or 1.17, or if an additional extension of time is necessary that is not accounted for in the papers filed with this Response, the Commissioner is authorized to debit our Deposit Account No. 19-0733 for any necessary fees, including any necessary extension fees or other fees needed to maintain the pendency of this application.

All rejections having been addressed, Applicants respectfully submit that this application is in condition for immediate allowance and respectfully solicit prompt notification of the same.

Respectfully submitted,

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